

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CASE NO. 5:13-CV-00527-F

U.S. TOBACCO COOPERATIVE INC.;)
U.S. FLUE-CURED TOBACCO)
GROWERS, INC.; and BIG SOUTH)
DISTRIBUTION, LLC,)

Plaintiffs,)

v.)

BIG SOUTH WHOLESALE OF)
VIRGINIA, LLC d/b/a BIG SKY)
INTERNATIONAL; BIG SOUTH)
WHOLESALE, LLC; UNIVERSAL)
SERVICES FIRST CONSULTING)
A/K/A UNIVERSAL SERVICES)
CONSULTING GROUP; JASON)
CARPENTER; CHRISTOPHER)
SMALL; EMORY STEPHEN DANIEL;)
ALBERT JOHNSON, and other)
unnamed coconspirators,)

Defendants.)

**MOTION FOR ACCESS
TO JANUARY 10, 2017
DOCKET ENTRIES**

On December 7, 2016, this Court granted Matthew Apuzzo's Motion for Leave to Intervene for the limited purpose of asserting and protecting his and the people's presumptive right of access to judicial documents and proceedings. [DE 655] By that same Order, the Court granted the relief sought by Intervenor and removed the seal on all documents filed in the case following a 45-day period. Thus, the seal on all documents in this case is set to expire on January 21, 2017. On January 10, 2017 – 34 days after the Court's ruling and 11 days prior to the ruling taking effect – the United States of America ("the Government") has filed under seal

a request that the December 7, 2016, Court order be stayed. The Court has not ruled on the Government's motion to seal its Motion and has directed an expedited briefing schedule for any response and reply [DE 695], but the Government's Motion and related briefing remain hidden from view. Intervenor Matthew Apuzzo moves this Court immediately to deny the Government's request for sealing its January 10, 2017, filings or, at a minimum, to provide Intervenor immediate access to those filings.

The Government's January 10, 2017 request directly implicates the rights and interests of Intervenor, yet because the Government has filed its request under seal, Intervenor is precluded from knowing anything about the basis for the request. What is known and on the record is that "the Government is now a full party to the litigation." [Order, DE 655] It is on the record that defendants "were engaged in certain transactions with the Bureau of Alcohol, Tobacco, Firearms, and Explosives." [¶ 18, DE 22] It is on the record that defendants "Carpenter and Small had assisted the ATF in the past." [¶ 27, DE 22]

Indeed, for years this case has proceeded essentially entirely under seal out of caution that some harm might come to someone. In its December 7, 2016 Order, the court rightly said that such unsubstantiated claims weren't enough to overcome the First Amendment interest, especially in light of the fact that the case now implicates allegations of grave wrongdoing by the Government. Now, days before the Court's order takes effect, the Government is again making secret filings, asking the Court to stay its properly considered Order. Neither Intervenor nor the

public knows any of the grounds on which the Government makes this extraordinary request, because its arguments have been filed in secret.

The Court quite rightly found the balance of interests favor public access to all the documents at issue in this case. The named individuals, defendants Carpenter and Small, were identified three years ago as Government agents, and the defendants themselves have confirmed that they were involved in "undercover operations of the United States government." [DE 22]. In the intervening three years since those disclosures, there apparently has been no actual threat to the safety of the identified individuals.

Intervenor and the public are left to speculate about any arguments that could support the Government's motion. Intervenor urges the Court to immediately make public the Government's Docket Entries 691 through 694 or, at a minimum, to make them immediately available to Intervenor so that Intervenor may knowledgably consider the Government's arguments and meaningfully respond in keeping with the Court's scheduling order entered January 12, 2017.

Respectfully submitted this the 13th day of January, 2017.

/s/ C. Amanda Martin

C. Amanda Martin

N.C. State Bar No. 21186

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 2017, I electronically filed the foregoing Intervenor's Motion For Access to January 10, 2017 Docket Entries with the Clerk of Court using the CM/ECF system addressed to the following counsel:

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This 13th day of January 2017.

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